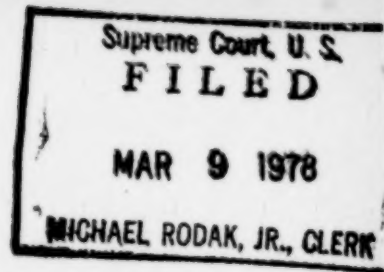


APPENDIX



IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-453

EASTEX, INCORPORATED,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

Petition for Certiorari Filed September 22, 1977

Certiorari Granted January 23, 1978

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Supreme Court of the United States

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 2, 1974	Charge No. 23-CA-5085 filed
June 4, 1974	Amended Charge filed
June 4, 1974	Complaint and Notice of Hearing issued
June 6, 1974	Petitioner's Answer filed
July 23, 1974	Hearing
September 5, 1974	Decision of Administrative Law Judge Richard J. Boyce issued
September 23, 1974	Petitioner's exceptions to the decision of the Administrative Law Judge filed
December 4, 1974	Decision and order issued by the National Labor Relations Board
December 17, 1974	Petition of Eastex, Inc. for Modification filed in the Fifth Circuit Court of Appeals, No. 74-4156
January 27, 1975	Cross-Application for Enforcement filed by NLRB
April 29, 1977	Opinion and Judgment of the Fifth Circuit Court of Appeals granting enforcement
May 12, 1977	Eastex' Petition for Rehearing <i>En Banc</i> filed
August 5, 1977	Petition for Rehearing denied
August 11, 1977	Eastex' Motion for Stay of Mandate filed
August 24, 1977	Stay of Mandate granted to September 23, 1977
September 22, 1977	Petition for Writ of Certiorari filed
December 16, 1977	Brief in Opposition for the NLRB filed
January 23, 1978	Petition granted

Joint Exhibit No. 1

NATIONAL LABOR RELATIONS BOARD
Board No. 1

NEWS BULLETIN TO LOCAL 801 MEMBERS
FROM ROYD YOUNG - PRESIDENT

(1) WE NEED YOU

As a member, we need you to help build the Union through your support and understanding. Too often members become disinterested and look upon their Union as being something separate from themselves. Nothing could be further from the truth.

This Union or any Union will only be as good as the members make it. The policies and practices of this Union are made by the membership-the active membership. If this Union has ever missed its target it may be because not enough members made their views known where the final decisions are made - The Union Meeting.

It would be impossible to satisfy everyone with the decisions that are made but the active member has the opportunity to bring the majority around to his way of thinking. This is how a democratic organization works and it's the best system around.

Through participation you can make your voice felt not only in this Local but throughout the International Union.

(2) A PHONY LABEL - "right to work"

Wages are determined at the bargaining table and the stronger the Union, the better the opportunity for improvements. The "right-to-work" law is simply an attempt to weaken the strength of Unions. The misleading title of "right-to-work" cannot guarantee anyone a job. It simply weakens the negotiating power of Unions by outlawing provisions in contracts for Union shops, agency shops, and modified Union shops. These laws do not improve wages or working conditions but just protect free riders. Free riders are people who take all the benefits of Unions without paying dues. They ride on the dues that members pay to build an organization to protect their rights and improve their way of life. At this time there is a very well organized and financed attempt to place the "right to work" law in our new state constitution. This drive is supported and financed by big business, namely the National Right-To-Work Committee and the National Chamber of Commerce. If their attempt is successful, it will more than pay for itself by weakening Unions and improving the edge business has at the bargaining table. States that have no "right-to-work" law consistently have higher wages and better working conditions. Texas is well known for its weak laws concerning the working class and the "right-to-work" law would only add insult to injury. If you fail to take action against the "right-to-work" law it may well show up in wages negotiated in the future. I urge every member to write their state congressman and senator in protest of the "right-to-work" law being incorporated into the state constitution. Write your state representative and state senator and let the delegate know how you feel.

(3) POLITICS and INFLATION

The Minimum Wage Bill, HR 7915, was vetoed by President Nixon. The President termed the bill as inflationary. The bill would raise the present \$1.40 to \$2.00 per hour for most covered workers.

It seems almost unbelievable that the President could term \$2.00 per hour as inflationary and at the same time remain silent about oil companies profits ranging from 56% to 280%.

It also seems disturbing, that after the price of gasoline has increased to over 50 cents a gallon, that the fuel crisis is beginning to disappear. If the price of gasoline ever reaches 70 cents a gallon you probably couldn't find a closed filling station or empty pump in the Northern Hemisphere.

Congress is now preceeding with a second minimum wage bill that hopefully the President will sign into law. At \$1.60 per hour you could work 40 hours a week, 52 weeks a year and never earn enough money to support a family.

As working men and women we must defeat our enemies and elect our friends. If you haven't registered to vote, please do so today.

(4) FOOD FOR THOUGHT

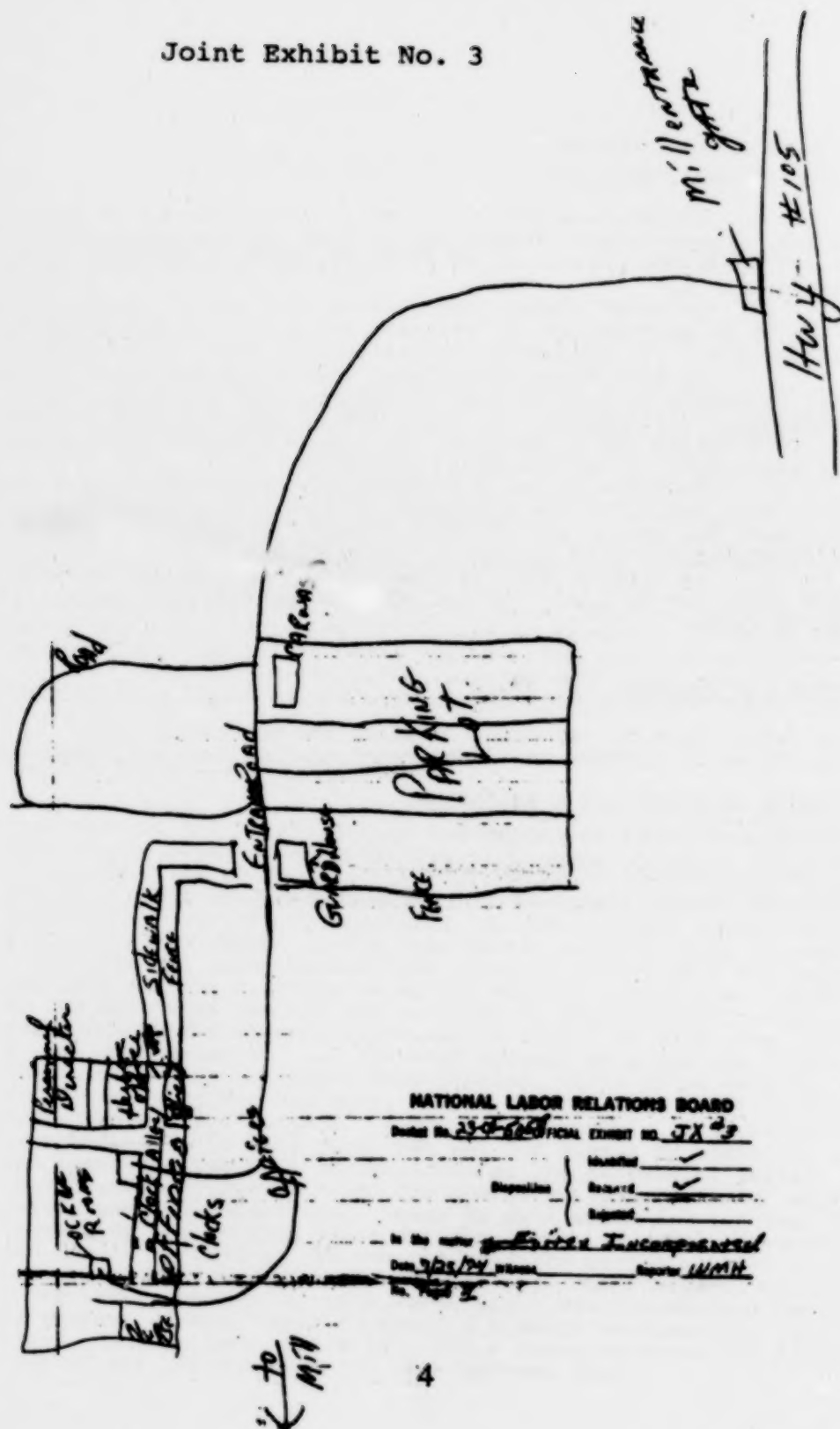
In Union there is strength, justice, and moderation;
In disunion, nothing but an alternating humility and insolence.

COMING TOGETHER WAS A BEGINNING

STAYING TOGETHER IS PROGRESS

WORKING TOGETHER MEANS SUCCESS

THE PERSON WHO STANDS NEUTRAL, STANDS FOR NOTHING!



NATIONAL LABOR RELATIONS BOARD

Case No. 23-CA-5058 OFFICIAL EXHIBIT NO. JX-3

Identified ☒
 Disposition ☒
 Reported ☒

In the matter of Eastex Incorporated
 Date 7/23/74 at Houston Reported by W/MH

BEFORE THE
 NATIONAL LABOR RELATIONS BOARD

Twenty-third Region

Case No. 23-CA-5058

In the Matter of:

EASTEX, INCORPORATED

— and —

UNITED PAPERWORKERS INTERNATIONAL
 UNION, LOCAL 801

Room 227,
 U. S. Post Office Building
 Beaumont, Texas
 Tuesday, July 23, 1974.

The above-entitled matter came on for hearing pursuant to notice, at 10:00 a.m.

BEFORE:

HON. RICHARD J. BOYCE, Administrative Law Judge

APPEARANCES:

FRANK L. CARRABBA, Esq., National Labor Relations Board, Region Twenty-Three, One Allen Center, Suite 920, 500 Dallas Avenue, Houston,

[1]

Texas 77002; appearing as counsel for the general Counsel.

TOM M. DAVIS, Esq., Baker & Botts, 3000 One Shell Plaza, Houston, Texas 77002; appearing on behalf of the Respondent.

BOYD YOUNG, Representative of the United Paperworkers International Union, Local 801, P.O. Box 598, Evadale, Texas 77615; appearing on behalf of the Charging Party.

* * *

[11]

* * *

BOYD YOUNG

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Carrabba) Mr. Young, would you state your name and address for the record, please?

A. Boyd Young, P. O. Box 242, Evadale, Texas.

Q. Mr. Young, by whom are you employed?

A. Eastex, Incorporated.

Q. Are you currently an employee of Eastex?

A. Yes, but I am on an extended leave of absence to work for the Union.

Q. And what is—when did you go on an extended leave of absence?

[12]

A. I took a leave last October 8th.

Q. Would that be 1973?

A. That's correct.

Q. And are you currently employed by anybody other than Eastex?

A. No, Eastex, and I hold a local office at the Local 801, which is the bargaining unit at Eastex.

Q. What is the full name of the Union that you are

[12]

holding an office in?

A. United Paperworkers International Union, and I hold office in Local 801.

Q. What office do you hold?

A. President.

Q. Do you hold any office with the International?

A. Yes. I am representative.

Q. Mr. Young, is there currently in existence a collective bargaining agreement with Eastex by the Union?

A. Yes, sir, there is.

Q. Do you know when that agreement expires?

A. August 1, '74.

Q. Mr. Young, I would like to ask you if you have ever had a conversation with any management official in which the distribution of literature was a subject?

A. Yes, I have.

Q. Who was that conversation with?

A. Mr. Herbert J. George.

Q. And does he have an official capacity with the Company?

A. Yes.

Q. What is that capacity?

[12]

A. He is Assistant Personnel Director.

Q. And when did that conversation take place?

[13]

A. April 22nd, 10:00 o'clock.

Q. Would that be 1974?

A. That's correct.

Q. Could you tell the Judge as best you can recall what was said in that conversation?

A. I entered Mr. George's room—office, at approximately 10:00 o'clock, and I handed him a copy of a news letter—

Q. If I can interrupt you at this time, Mr. Young. I show you a copy of an exhibit which has been marked as Joint Exhibit 1, and ask you to take a look at that and tell me if you have ever seen that before.

A. This is a copy of the news letter that I handed Mr. George.

Q. O. K., sir.

A. He looked at it very briefly and handed it back to me, and I told him that it was my understanding that he had refused, or the Company had refused permission to the Union to distribute this, and he said, "Yes, they had."

And I said—well, I was again asking permission for employees of the Company to be allowed to distribute this on non-working hours, on non-production areas, and specifically outside the clock alley; and if that area posed a problem, we would be willing to move to any area

[14]

convenient to the Company, out on the end of the walk

[15]

or guardhouse or parking lot, that we would only hand it out to employees leaving the plant, and where it wouldn't cause a litter problem in the plant.

And he said that we didn't have permission to do it. And so I asked him was this the Company's final position, and if so, was he refusing me permission to do it, and if he was, was that the Company's final position. And he said he would have to check with Mr. Menius. And he left the room very briefly, come back and said that it was the Company's final position, that they felt that we had access to the people through the U. S. Mail, and through union meetings.

He asked me at that time were we going to hand it out anyway, and I told him no, that we thought we had recourse through other channels, and we got up to leave, and he said, "Well, I guess I will see you in court."

Q. Mr. Young, you have testified that you made the request on behalf of employees of Eastex to pass it out in non-production areas in non-working time.

Are you sure you made the request in those words?

A. Yes, I am.

[15]

Q. How can you be sure you made the request that particular way?

A. Because permission had been denied to Hugh Terry, and he had reported to me.

Q. Who is Hugh Terry?

A. Hugh Terry is an employee of Eastex, and he holds an office with the Local Union which is vice-president, and he had reported to me, and I in turn called Mr.

[15]

Reeves Brunk, International Representative, and discussed it with him, and told him that the Union had been denied permission for employees to hand it out on non-production areas on non-working time.

And he questioned me very precisely on how did I know since I wasn't there, and told me to go back a second time and make sure that the Company understood our request and ask them again and get their position and make sure this was an official position of the Company and make sure that they understood that employees were going to hand it out, and they were going to do it in non-production areas on non-working time, and if it posed a problem in the area, explain to him that we would cooperate in any way, except we didn't think we—we were not going out on the highway, on public or state property, and that was the second meeting, and that's why—

[16]

Q. When did you have this conversation with Mr. Brunk?

A. It was either the latter part of March or early April, because there was probably a month from the time that Mr. Hugh Terry asked permission and the time I asked permission. And the date he asked, I am not sure of. I only know the date that I asked.

Q. And then at that point, after that conversation with Mr. Brunk, you went back and had the meeting with Mr. George?

A. That's correct.

Q. Mr. Young, can you tell the Court why you asked for permission to hand out this news bulletin?

[20]

A. Yes. We were going into negotiations, and it was something—we was trying to reorganize our group into a stronger group. We were trying to get members, people that were working there who were non-members, and try to motivate or strengthen the conviction of our members, and it was to organize a little.

Also, we had a good working relationship with the Company, and it had always been our policy and the Company's policy to approach each other with a request of any kind. They always tell us when they implement something new and discuss it with us, and it was a news bulletin, and we wanted to hand it out on their

[17]

property.

So we approach them, not that the contract said we had to or there was no rule said we had to, but it had just been the policy, and we felt it would continue our good relationship with the Company to handle it in this manner.

Q. Mr. Young, could you tell us how long you have been an employee with Eastex?

A. August 1 will be fourteen years.

* * *

[20]

* * *

Mr. Carrabba: I ask that you mark this as Joint

[21]

[21]

Exhibit 3.

(The document above-referred to was marked Joint Exhibit No. 3 for identification.)

Mr. Davis: I understand, your Honor, I will be furnished with a copy of this.

Judge Boyce: Yes.

Mr. Carrabba: Your Honor, Joint Exhibit 3 is a hand-drawn sketch of the plant premises, and I would offer it into evidence at this time so that any references made to the clock alley or to any other areas in the plant can be identified on the map, and hopefully would assist us and anyone who reviews the record.

Judge Boyce: Mr. Davis, any objections?

Mr. Davis: We have no objections to it, sir.

Judge Boyce: All right. Joint Exhibit 3 is received.

* * *

[22]

* * *

Q. (By Mr. Carrabba) Mr. Young, on this drawing, where it refers to Herb's office, whose office is that?

A. Herb George, Assistant Personnel Director.

Q. And the office adjacent to that, right next to that, is the—is labeled "Personnel Director."

[31]

Whose office is that?

A. Mr. Leonard Menius, Personnel Director.

Q. O. K. Now, a hallway which has been labeled on the document as Clock Alley, there are two boxes in here. Are those clocks at one end of the hall?

A. Time clocks.

Q. Time clocks, O. K. And is this the clock alley that you were referring to in your conversation with Mr. George, requesting permission be granted to pass out the union literature—I mean the news bulletin in that area?

A. That's correct.

* * *

[30]

* * *

Q. Mr. Young, when you had the conversation which you have detailed with Mr. Herbert George on April 22, nothing was said by you about the two rules in the current collective bargaining agreement, rules 14 and 15 on page 39; and nothing was said by him about those two rules; isn't that correct?

A. Absolutely correct.

* * *

[31]

* * *

Q. Now, you have told us that the collective bargaining agreement expires August 1, 1974.

[31]

A. That's correct.

Q. And the Union is presently in negotiation with the Company for a new agreement?

A. Correct.

[33]

* * *

Q. (By Mr. Davis) Now, I notice at the last page of your news bulletin—has something to do with the minimum wage—what is the minimum wage in the bargaining unit at the present time, and what was it on April 22nd, 1974, when you had your discussion with Mr. George?

Mr. Carrabba: Your Honor, I will object at this time. I don't see the relevance of this question either. I don't know what counsel is intending to prove by this line of questioning.

Judge Boyce: Could you tell me, Mr. Davis?

Mr. Davis: I am purporting to prove this, this news bulletin, in certain respects is purely a political bulletin dealing with things which would have no possible effect upon the employment relation at Eastex and dealing with matters which Eastex could not in any way control or influence or have anything to do with.

Now, as far as the first part where it says, "We need you," if they had asked just asked to distribute that and the last part, "food for thought," we would have had no objections. Our objection is to the other portions.

[68]

Judge Boyce: Overruled. I will permit that in the record.

* * *

[66]

* * *

HUGH TERRY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Carrabba) Would you state your name and address for the record, please?

A. Hugh Terry, Route 2, Box 74, Buna, Texas.

Q. Mr. Terry, by whom are you employed?

A. Eastex, Incorporated.

[67]

Q. And how long have you been an employee of Eastex?

A. July 9th of this year was seventeen years.

* * *

[68]

* * *

Q. Mr. Terry, have you ever had any conversation

[68]

with a management official at Eastex in which the subject matter of distribution of a news bulletin was a subject?

A. Yes, I have.

Q. I show you what has been marked for identification as Joint Exhibit 1, and I would like you to take a look at it and ask you if you have ever seen that document before?

A. Yes, sir. This is the bulletin we were discussing.

Q. O. K. When was the first time that you discussed that document with a management official at Eastex?

A. March 26th, 1974.

Q. And who was that management official that you talked to?

A. Mr. Herb George.

Q. Do you know if he has any official capacity with the Company?

A. He is Assistant Personnel Director for Eastex, Incorporated.

Q. And where did this conversation take place?

[69]

A. In Mr. George's office.

Q. And can you tell the Judge as best you can recall what was said in that conversation?

A. Well, I entered Mr. George's office and spoke and handed him a copy of this news bulletin and told him that Boyd Young wanted me to come out and see if they would give us permission to hand out this news bulletin to the employees in the clock alley or either distribute it as an exhibit on a little table there, or something, where they could pick up a copy of it.

[70]

Mr. George took it, looked it over, read it, not in detail, but read over it and kind of jokingly, he said, "We can't let you hand out propaganda like that out here," but said, "I will find out about it."

So I left, and a few days later I don't know, three or four days, I went back by his office and asked him what the answer was on the distributing this, and he said, "The answer is no." And I says, "Well, all I can do is just tell Boyd what you said."

Q. O. K. What other conversations have you had with Mr. George concerning this news bulletin, if any?

A. Well, I was in a meeting on April 22nd when Mr. Young asked permission for the second time to hand out this news letter.

Q. Do you recall what was said in that conversation?

[70]

A. We were there on a grievance was the reason we were there initially, and after we had discussed this, well, Mr. Young taken a copy out of his briefcase and handed it to Mr. George and said, "I would like to talk about this while I am here, too."

And he took it and looked it over and told Boyd that they couldn't let us hand it out. And at this point, Boyd got rather serious and said, "Is this you all's final answer?" and Mr. George said, "Well, I don't know. I will have to check with Mr. Menius. We will see."

So he left the room briefly, came back in and said, "The answer is no."

* * *

[78]

[78]

* * *

LEONARD C. MENIUS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Davis) State your name, please.

A. Leonard C. Menius.

Q. By whom are you employed and in what capacity are you employed, Mr. Menius?

A. By Eastex, Incorporated, as the Personnel Director.

Q. How long have you been so employed at Eastex?

A. Since February of 1954.

* * *

[92]

* * *

Q. Now, Mr. Menius, were you shown Joint Exhibit 1, the news bulletin, at some time before this case was filed against the Company?

A. Yes, I was.

Q. Did you advise Mr. George that passing that out would not be permitted on company property?

A. Yes. He came back into my office with it in his hand and he said, "Boyd wants to pass this out." So I looked at it and looked quickly through the first para-

[96]

graph and would have said sure at that point, then I got to the second and third paragraphs and said no.

Q. Why did you say no to the second and third paragraphs?

A. I didn't see any way in which that was related to our association with the Union.

[93]

Q. Looking at the first paragraph headed "We Need You," and the last one, "Food for Thought," in Joint Exhibit 1, if that had been the only thing in that, would there have been any objection to them either passing it out or posting it on the bulletin board?

A. No.

* * *

[96]

* * *

Q. (By Mr. Davis) Now, how long have you been in negotiations for the new labor agreement which I understand will become effective August 1, 1974, when you reach it?

Mr. Carrabba: Your Honor, I object. I don't know what relevance that question has. We have had similar questions before in that area.

Judge Boyce: Sustained.

Mr. Davis: I would like to make my offer of proof then.

[96]

Q. (By Mr. Davis) How long have those negotiations been going on?

A. We exchanged items, the Union and the Company, sometime in June. I don't remember the exact date and then began actual negotiations July 8th, this month.

* * *

[97]

* * *

HERBERT JAMES GEORGE

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Davis) State your name, please.

[98]

A. Herbert J. George.

Q. By whom are you employed and where and in what capacity are you employed, Mr. George?

A. By Eastex, Incorporated, Silsbee, Texas, as Assistant Personnel Director.

Q. How long have you been so employed?

A. Since October of 1969.

* * *

[100]

[99]

* * *

Q. Now, will you tell me, please, the conversations which you had concerning Joint Exhibit No. 1, which is

[100]

the news bulletin that the Union wanted to distribute on company property?

A. The first conversation regarding that document was with Hugh Terry. He brought a copy of it into my office and said that—something to the effect that Boyd Young had asked him to find out if the Company would permit copies of this document to be distributed to employees.

He requested that—what he wanted to do was to set up—for us to set up a table in the clock alley with a stack of these copies on it so the employees could pick it up as they came and went to work.

He made reference at that point that normally they mailed this type of information to the employees, but with the increase in postal rates they felt they could save a little money by having it passed out in this fashion.

I looked at the document at that point and told him that I didn't know. I doubt that we would grant that request, but I would check it with higher management.

Q. Was there any more conversation other than that on the first occasion?

A. None that I recall.

Q. Can you fix the approximate date of that?

[101]

[101]

A. No, sir. They have testified to a date in April—excuse me—a date in March, and I would say that it was approximately around that time, but I am not sure exactly what the date was.

Q. All right. What was the next conversation you had pertaining to Joint Exhibit 1?

A. The next conversation would have been later that day or within a day or so. Boyd Young called on the telephone about something else, and in the course of the conversation he asked if Hugh Terry had brought by his letter.

And I said yes he had. And he said, "What did you think about it? Are you going to let us do this?"

And I said, "I really don't know at this point, but I will let you know as soon as I can give you an answer." That was the next conversation.

A few days later I did reply back to Hugh Terry that permission to place these copies in the clock alley was being denied.

You want me to continue on?

Q. Did you tell him why?

A. No, sir.

Q. All right. Continue on.

A. The next conversation about this particular document occurred in my office with Boyd Young. He asked

[102]

if it was still the Company's position that the Union could not pass these out on company premises, and I said yes.

[103]

He said, "You mean you would deny me the right to pass out literature like this to our membership?"

And I said, "Yes. We feel that you have other ways to communicate with your membership, and that that right is being denied."

And he said, "Well, we want to pass it out in the clock alley where people—they are not working—as they come and go to work."

And I said, "No, we can't let you do that."

And he said, "Well, can we pass it out on the walkway?" and I said, "No."

He said, "Can I pass it out in the parking lot?" and I said, "No." He said, "Are you sure that this is the Company's final position?" I said, "Yes. I am sure, but if you want me to doublecheck I would be glad to."

And he kind of indicated that he did so, so I got up and went into the other office where Mr. Menius was and I said that Boyd had asked again if he can pass out this letter that I showed you a few weeks ago, and I said, "The only difference this time is that rather than putting it on a table in the clock alley,

[103]

he wants to pass it out to the employees by hand. He wants me to doublecheck on the Company's position."

Mr. Menius said, "It's still our position that he can't do it."

And I went back into the office and told him that our position was unchanged.

* * *

SUPREME COURT OF THE UNITED STATES

No. 77-453

Eastex, Incorporated,
Petitioner,

v.

National Labor Relations Board

ORDER ALLOWING CERTIORARI. Filed January 23, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.